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Mok Sai How v Dakang bin Bikasan

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HIGH COURT (SANDAKAN) — SUIT NO SDK-22NCvC-5/3 OF 2016
CELESTINA STUEL GALID J
16 DECEMBER 2019

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Contract — Breach — Specific performance — Specific performance of sale and purchase agreement — Whether parties intended for sale and purchase of land or for only sublease of land — Whether defendant sold land to plaintiff — Whether sale and purchase agreement and power of attorney valid and enforceable between parties — Whether signature of defendant forged

D

Evidence — Relevancy — Opinion as to handwriting — Opinion evidence of person who was not an expert but who was familiar with handwriting of the person whose handwriting or signature was in issue — Whether relevant — Whether hearsay — Evidence Act 1950 ss 47 & 114(e)

E

The plaintiff had filed an action against the defendant for breach of contract and the tort of trespass to land and claimed for specific performance of a sale and purchase agreement ('the SPA') entered between the parties for a parcel of land situated at Nangoh, in the District of Beluran, Sabah ('the land'). The plaintiff further claimed that the defendant had granted the plaintiff a power of attorney over the land dated 29 December 2006 ('the PA'). The defendant had filed a counterclaim against the plaintiff for a declaration that he was the registered owner of the land and that the SPA and the PA were null and void and had no legal effect. Alternatively, the defendant claimed that if there was any dealing and/ or document executed between him and the plaintiff, it was only to grant the plaintiff a sublease of ten years over the land from the year 2006 to 2016 and the sublease had expired in 2016 when the defendant re-entered the land and refused the plaintiff access to the land. The agreed issues to be tried were: (a) what was the parties' intention when entering into the SPA and the PA ('issue 1'); (b) whether the defendant had sold the land to the plaintiff ('issue 2'); (c) whether the SPA and the PA were valid and enforceable between the parties ('issue 3'); and (d) whether the defendant's counterclaim was statute barred ('issue 4'). On top of the agreed issues to be tried, the court had also considered the issue of whether the signatures of the defendant on the SPA and PA had been forged as contended by the defendant. In relation to this issue, the plaintiff relied on the evidence of PW2 who had attested the SPA and the payment voucher; and PW1 who was familiar with the signature of one George Bungow, the attestor of the defendant's signature in the PA.

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Held, allowing the plaintiff's action with costs of RM55,000 subject to allocatur:

(1) PW2's role was merely to attest to the signatures of the plaintiff and the defendant on the SPA and the payment voucher. Based on the definitions of the words 'attest' and 'attestation' in *Black's Law Dictionary* (6th Ed) at pp 127–128, it could not be said that the attestor had a duty to ensure that the person whose signature was being attested to understood what document he was executing. Further, bearing in mind that PW2 was a 'Ketua Kampung' at the material time and that he had known both the plaintiff and the defendant, the submissions by the defendant that PW2 was a layperson and therefore his attestation of the SPA and payment voucher was questionable was without any merit. Quite apart from seeing 'Ketua Kampung' as mere laypersons, the court had in fact treated the evidence of 'Ketua Kampung' to be of value (see paras 26, 28 & 33).

(2) Section 47 of the Evidence Act 1950 ('the EA') allowed for the reception of opinion evidence of a person who was not an expert but who was familiar with the handwriting of the person whose handwriting or signature was in issue. In the present case, PW1's evidence identifying the signature of George Bungow was not challenged at all. Thus, the court was entitled to accept, and the court did accept that the said George Bungow had attested the signature of the defendant on the PA. Following therefrom, the court was further entitled to invoke s 114(e) of the EA that omnia praesumuntur rite esse acta (all acts are presumed to have been rightly and regularly done). In addition, PW1 merely confirmed the signature of the attestor on the PA and nothing more. It could not be therefore said to have amounted to hearsay evidence. In any event, it was not shown by the defendant as to how the hearsay rule would have applied (see paras 34 & 36–38).

(3) Based on the above findings, the court found that the plaintiff had prima facie proven that the SPA and PA had been executed by the defendant. The defendant therefore bore the evidential burden of proving that his signatures on the said documents had been forged as alleged in his statement of defence. In his witness statement, the defendant merely reiterated his pleaded defence that his purported signatures on the SPA and PA had been forged and that he only affixed his thumbprint on documents and not his signature as he was illiterate. No other circumstances were pleaded to support the allegation of forgery. Neither was there any other evidence led to support the allegation of forgery. On the totality of the evidence, the court found that the allegation of forgery by the defendant had not been made out (see paras 40, 46 & 48).

(4) The plaintiff's testimony that there was an agreement between him and the defendant for the sale and purchase of the land was supported by the contemporaneous documents produced in court namely the SPA, PA

and the payment vouchers evidencing the part payments made to the defendant. On the other hand, save for the oral evidence of the defendant, there were no documents produced to support the allegation that he had only intended to sublease the land to the plaintiff. The court further found that the defendant was bound by the terms of the SPA and PA even if he had not understood the contents of the documents (see paras 55, 63, 65–66 & 72).

(5) It must be noted that in the case of *Hon Chung Lip v Kwan Ngen Wah & Ors* [2012] 5 MLJ 356 ('Hon Chung Lip'), the appellant had sought for a declaration that he was the beneficial and legal owner of the subject lands which he had purchased from the land applicants. Thus, when the Court of Appeal held that the land applicants had no registered right or interest to begin with, it followed that they could not have 'passed on' any right to the appellant for the court to have granted the declaration sought. However, in the present case, the plaintiff had not sought for such declaration, the plaintiff had instead sought for a declaration that the SPA was binding on the defendant and for its specific performance. Such a remedy would have been in the contemplation of the Court of Appeal in *Hon Chung Lip* (see paras 78–79).

(6) In the present case, although it was not in dispute that the land title had yet to be issued, it was an agreed fact that in January 2016, the defendant had put up a notice on the land to prevent the plaintiff from entering the land. This was contrary to cl 1 of the PA which, inter alia, allowed the plaintiff to take possession of the land. Thus, following the case of *Hon Chung Lip*, the court was of the view that the remedies sought for by the plaintiff in this action were not dependent on the land title having been issued. Based on the above findings, the court found that the SPA and the PA were valid and enforceable between the parties. In addition, the remedies sought for by the defendant in his counterclaim had been negated by the findings of the court as to issues 1, 2 and 3 above in favour of the plaintiff (see paras 80–81 & 83).

[Bahasa Malaysia summary

Plaintif telah memfailkan tuntutan terhadap defendan kerana melanggar kontrak dan melakukan tort pencerobohan tanah dan menuntut untuk pelaksanaan spesifik perjanjian jual beli ('PJB') yang dimeterai antara pihak-pihak untuk sebidang tanah yang terletak di Nangoh, di Daerah Beluran, Sabah ('tanah tersebut'). Plaintif selanjutnya mendakwa bahawa defendan telah memberikan surat kuasa wakil bertarikh 29 Disember 2006 bagi tanah tersebut kepada plaintif ('SKW'). Defendan telah memfailkan tuntutan balas terhadap plaintif bagi menuntut satu deklarasi bahawa dia adalah pemilik tanah yang berdaftar dan bahawa PJB dan SKW tersebut adalah tidak sah dan tidak mempunyai kesan undang-undang. Sebagai alternatif, defendan mendakwa bahawa jika ada urusan dan/atau dokumen yang

dilaksanakan antara dia dan plaintif, itu hanya untuk memberi pajakan kecil selama sepuluh tahun di atas tanah tersebut dari tahun 2006 hingga 2016 dan pajakan kecil tersebut telah berakhir pada tahun 2016 ketika defendan memasuki semula tanah tersebut dan melarang plaintif masuk ke tanah tersebut. Isu-isu yang dipersetujui untuk dibicarakan adalah: (a) apa niat pihak-pihak ketika memasuki PJB dan SKW ('isu 1'); (b) sama ada defendan telah menjual tanah tersebut kepada plaintif ('isu 2'); (c) sama ada PJB dan SKW tersebut sah dan dapat dilaksanakan antara pihak-pihak ('isu 3'); dan (d) sama ada tuntutan balas defendan terhalang oleh undang-undang ('isu 4'). Selain daripada isu-isu yang dipersetujui untuk dibicarakan, mahkamah juga telah mempertimbangkan isu sama ada tanda tangan defendan pada PJB dan SKW telah dipalsukan sebagaimana yang didakwa oleh defendan. Berkaitan dengan isu ini, plaintif bergantung kepada keterangan PW2 yang telah mengesahkan PJB dan baucar pembayaran; dan PW1 yang biasa dengan tandatangan George Bungow, pengesah bagi tanda tangan defendan di dalam SKW.

Diputuskan, membenarkan tindakan plaintif dengan kos RM55,000 tertakluk kepada alokatur:

(1) Peranan PW2 hanyalah untuk mengesahkan tandatangan plaintif dan defendan di dalam PJB dan baucar pembayaran. Berdasarkan definisi perkataan 'attest' dan 'attestation' dalam *Black's Law Dictionary* (Edisi ke-6) di ms 127–128, tidak dapat dikatakan bahawa pengesah tandatangan mempunyai kewajiban untuk memastikan bahawa orang yang tandatangannya telah disahkan memahami dokumen apa yang dia laksanakan. Selanjutnya, mengambil kira bahawa PW2 adalah Ketua Kampung pada masa yang material dan bahawa dia telah mengenali plaintif dan defendan, penghujahan oleh defendan bahawa PW2 adalah orang awam dan oleh itu pengesahannya terhadap PJB dan baucar pembayaran boleh dipersoalkan adalah tidak bermerit. Mahkamah tidak menganggap Ketua Kampung hanya sebagai orang awam dan menganggap keterangan Ketua Kampung sebagai bernilai (lihat perenggan 26, 28 & 33).

(2) Seksyen 47 Akta Keterangan 1950 ('AK') membenarkan penerimaan keterangan pendapat seseorang yang bukan pakar tetapi yang biasa dengan tulisan tangan orang yang tulisan tangan atau tandatangannya dipersoalkan. Dalam kes ini, keterangan PW1 yang mengenal pasti tandatangan George Bungow sama sekali tidak ditentang. Oleh itu, mahkamah berhak untuk menerima, dan mahkamah telah menerima bahawa George Bungow tersebut telah mengesahkan tanda tangan defendan di dalam SKW. Berikutan itu, mahkamah berhak untuk mengguna pakai s 114 (e) AK bahawa omnia praesumuntur ritus esse acta (semua tindakan dianggap telah dilakukan dengan betul dan teratur). Di samping itu, PW1 hanya mengesahkan tandatangan

pengesah di dalam SKW dan tidak lebih dari itu. Oleh itu, hal itu tidak boleh dikatakan sebagai keterangan dengar cakap. Dalam keadaan apa pun, defendan tidak menunjukkan bagaimana prinsip keterangan dengar cakap boleh digunapakai (lihat perenggan 34 & 36–38).

(3) Berdasarkan dapatan-dapatan di atas, mahkamah mendapati bahawa plaintif telah membuktikan secara prima facie bahawa PJB dan SKW telah dilaksanakan oleh defendan. Oleh itu, defendan menanggung beban pembuktian untuk membuktikan bahawa tandatangannya pada dokumen-dokumen tersebut telah dipalsukan seperti yang didakwa dalam pernyataan pembelaannya. Dalam keterangan saksinya, defendan hanya mengulangi pembelaannya bahawa tandatangannya yang dinyatakan pada PJB dan SKW telah dipalsukan dan bahawa dia hanya menurunkan cap jari pada dokumen dan bukan tandatangannya kerana dia buta huruf. Tidak ada keadaan lain yang diplidkan untuk menyokong tuduhan pemalsuan. Tidak terdapat juga bukti lain yang menyokong dakwaan pemalsuan. Berdasarkan keseluruhan bukti, mahkamah mendapati bahawa tuduhan pemalsuan oleh defendan gagal dibuktikan (lihat perenggan 40, 46 & 48).

(4) Keterangan plaintif bahawa terdapat perjanjian antara dia dan defendan untuk penjualan dan pembelian tanah tersebut disokong oleh dokumen-dokumen 'contemporaneous' yang dikemukakan di mahkamah iaitu PJB, SKW dan baucar pembayaran yang membuktikan sebahagian pembayaran dibuat kepada defendan. Sebaliknya, kecuali bukti lisan defendan, tidak ada dokumen yang dikemukakan untuk menyokong dakwaan bahawa dia hanya bermaksud untuk memajak tanah tersebut kepada plaintif. Mahkamah selanjutnya mendapati bahawa defendan terikat dengan terma-terma PJB dan SKW walaupun dia tidak memahami kandungan dokumen tersebut (lihat perenggan 55, 63, 65–66 & 72).

(5) Harus diingat bahawa dalam kes *Hon Chung Lip v Kwan Ngen Wah & Ors* [2012] 5 MLJ 356 ('Hon Chung Lip'), perayu telah memohon deklarasi bahawa dia adalah pemilik yang bermanfaat dan sah tanah yang dibelinya dari pemohon-pemohon tanah. Oleh itu, ketika Mahkamah Rayuan memutuskan bahawa pemohon-pemohon tanah dari awal lagi tidak memiliki hak atau kepentingan berdaftar, maka mereka tidak boleh 'menyerahkan' apa-apa hak pun kepada perayu untuk mahkamah membenarkan deklarasi yang dipohon. Namun, dalam kes semasa, plaintif tidak memohon deklarasi seperti itu, plaintif malah memohon deklarasi bahawa PJB tersebut mengikat defendan dan untuk pelaksanaan spesifik PJB. Remedi seperti itu tentunya berada dalam pertimbangan Mahkamah Rayuan di dalam *Hon Chung Lip* (lihat perenggan 78 & 79).

(6) Dalam kes semasa, walaupun tidak dinafikan bahawa geran tanah masih

belum dikeluarkan, adalah menjadi fakta yang dipersetujui bahawa pada bulan Januari 2016, defendan telah mengemukakan pemberitahuan di atas tanah tersebut untuk melarang plaintif memasuki tanah tersebut. Ini bertentangan dengan klausa 1 SKW yang, antara lain, membenarkan plaintif mengambil alih tanah tersebut. Oleh itu, dengan mengikuti kes *Hon Chung Lip*, mahkamah berpendapat bahawa remedi yang dipohon oleh plaintif dalam tindakan ini tidak bergantung kepada pengeluaran geran tanah. Berdasarkan dapatan-dapatan di atas, mahkamah mendapati bahawa PJB dan SKW adalah sah dan boleh dilaksanakan antara kedua-dua pihak. Di samping itu, remedi yang dipohon oleh defendan dalam tuntutan balasnya telah dinafikan oleh dapatan-dapatan mahkamah bagi isu 1, 2 dan 3 di atas yang memihak kepada plaintif (lihat perenggan 80–81 & 83).]

Cases referred to

Besharapan Sdn Bhd & Ors v Agroco Plantation Sdn Bhd & Anor [2007] 1 MLJ 101; [2006] 4 CLJ 878, CA (refd)

Bounty Dynamics Sdn Bhd (formerly known as Media Development Sdn Bhd) v Chow Tat Ming & 175 Ors [2016] 1 MLJ 507, CA (folld)

Goh Hock Hai v EON Bank Bhd [2011] 3 MLJ 189, HC (refd)

Hon Chung Lip v Kwan Ngen Wah & Ors [2012] 5 MLJ 356; [2012] 1 LNS 255, CA (folld)

Kiong Man v Kishen [1971] 1 MLJ 54 (refd)

Letchumanan Chettiar Alagappan @ L Allagappan (as executor to SL Alameloo Achi alias Sona Lena Alamelo Acho, deceased) & Anor v Secure Plantation Sdn Bhd [2017] 4 MLJ 697, FC (refd)

Lin Wen-chih & Anor v Mycom Bhd [2014] 3 MLJ 691; [2013] 1 LNS 1231, HC (refd)

Mohammad bin Loi (the personal representative ofthe deceased Loi bin Bataur@ Pg Lui Bataur) v Tai Leong Eng (the personal representative ofthe deceased Tai Wah Chung) & Ors and other appeals [2018] MLJU 1251; [2018] 1 LNS 1282, HC (distd)

Mohd Nazir bin Badar Shair v Timbalan Menteri Dalam Negeri [2000] 2 MLJ 559; [2000] 2 CLJ 805, HC (refd)

In the Matter of the estate of Chen Ngow @ Chen Seong Chin, deceased, and another petition [2011] 6 MLJ 737; [2011] 1 LNS 694, HC (distd)

Subramaniam v PP [1956] 1 MLJ 220, PC (refd)

Ukun Ampong v Mundan bin Gomasi [2010] MLJU 959; [2010] 1 LNS 918, HC (refd)

Legislation referred to

Evidence Act 1950 ss 47, 101, 102, 103, 114(e), (g)
Moneylenders Act 1951 s 27(2)
Stamp Act 1949

Edwin Tsen (Caroline Hee with him) (Tan Pang Tsen & Co) for the plaintiffs.
Sharatha Masyaroh bt John Ridwan (Douglas Lim with her) (Lincon & Co) for the defendant.

Celestina Stuel Galid J:

INTRODUCTION

[1] The plaintiff sued the defendant for breach of contract and for the tort of trespass and claimed for, inter alia, specific performance of a sale and purchase agreement dated 29 December 2006 ('the SPA').

[2] The plaintiff claimed that the defendant had entered into the SPA with him to sell a parcel of land under PT 93081873 (Lot 36) which was to be registered under CL 085330776 measuring an area of 4.363 hectares or 10.78 acres situated at Nangoh, in the District of Beluran, Sabah ('the land').

[3] The plaintiff further claimed that the defendant had granted the plaintiff a power of attorney over the land dated 29 December 2006 ('the PA').

[4] The defendant has filed a counterclaim against the plaintiff, inter alia, for a declaration that he was the registered owner of the land and that the SPA and the PA are null and void and have no legal effect.

[5] In the alternative, the defendant claimed that if there was any dealing and/or document executed between him and the plaintiff, it was only to grant the plaintiff a sublease of ten years over the land from the year 2006 to 2016. The defendant further claimed that the sublease had expired in 2016 when he re-entered the land and refused the plaintiff access to the land.

THE AGREED ISSUES TO BE TRIED

[6] The parties have filed a statement of agreed issues to be tried (encl 88) listing out the following issues for the court's determination:

(a) what was the parties' intention when entering into the SPA and the PA;

(b) whether the defendant had sold the land to the plaintiff;

(c) whether the SPA and the PA are valid and enforceable between the parties; and

(d) whether the defendant's counterclaim is statute barred.

A THE PLAINTIFF'S EVIDENCE

[7] Apart from the plaintiff himself (PW3), the other two witnesses who testified for the plaintiff were PW1 and PW2.

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[8] PW1 who is a court clerk with the Sessions Court in Sandakan was subpoenaed by the plaintiff to give evidence on the PA. PW1 testified that she recognised the signature of the person who had attested the PA to be one Mr George Bungow, who was once a commissioner for oaths with the Sandakan Court and who had passed away in the year 2012. PW1 further C added that she had known the deceased since the year 2003 until he passed away.

[9] PW2 gave evidence that he had signed on the SPA as a witness to the D signatures of the plaintiff and the defendant. He was a *Ketua Kampung* at the material time. Apart from the SPA, PW2 had also signed on a payment voucher dated 7 April 2008 which recorded the balance amount payable to the defendant to be RM29,340. PW2 said that the defendant's signature appeared on the said document above the 'Received Payment' line.

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[10] The plaintiff, PW3 testified that he had known the defendant since the year 2000 and that in 2006, the defendant had asked him whether he was interested in purchasing the land at the price of RM6,000 per acre. According to PW3, the defendant told him that the land title to the land had yet to be F issued but that it had already been allotted the land title number CL 085330776.

[11] PW3 said that they had agreed to the sale of the land at the price of G RM6,000 per acre but that the defendant had requested for the sum RM3,000 per acre to be stated on the SPA instead. The total purchase price was therefore RM64,680 that is, RM6,000 x 10.78 acres.

[12] It was PW3's evidence that the defendant had, prior to the execution of H the SPA, already taken advanced payments in the total sum of RM32,340.00. A further sum of RM3,000 was paid by PW3 to the defendant on 27 April 2008 thereby making the balance payable by the plaintiff, RM29,340 which sum was payable after the transfer of the land into PW3's name as agreed by the parties.

I

[13] However, PW3 said that in early 2016, the defendant had entered the land and put up a notice purporting to prohibit anyone from entering the land which was stated to be the private property of the defendant. By doing so, the plaintiff claimed that the defendant had committed trespass.

THE DEFENDANT'S EVIDENCE

[14] There were two witnesses for the defendant — the defendant himself as DW2 and his son-in-law, DW1.

[15] DW1 merely testified that he had lodged two police reports against the plaintiff for trespassing on the land in June and July 2016. He did not know about the SPA and the PA and neither did he know about a sublease on the land.

[16] The defendant, DW2 gave evidence that he was illiterate and did not know how to sign documents but that he only used to affix his thumbprint when executing documents. He denied that the signatures on the SPA and the PA were his.

[17] In his witness statement, DW2 went on to explain the reasons why the SPA was not a valid and legal agreement, including that:

(a) his signature on the SPA had been forged;

(b) the witness, PW2 who was a *Ketua Kampung* was not legally qualified to attest the execution of the SPA;

(c) the SPA was in the English language, raising doubts as to whether the parties thereto really understood its contents;

(d) he was not in a position to sell the land as the land was still under a land application at the material time; and

(e) the SPA was not stamped in accordance with the Stamp Act.

[18] According to DW2, he had only agreed to sublease the land to the plaintiff for ten years commencing from the year 2006 for the consideration sum of RM64,000. Although he said that he did receive some payments from the plaintiff, he further stated that those payments were for the sublease.

THIS COURT'S DECISION

Issues 1 and 2 — What was the parties' intention when entering into the SPA and the PA; and whether the defendant had sold the land to the plaintiff

[19] At the outset, the defendant's complaint that the SPA was not binding as it was allegedly not stamped in accordance with the Stamp Act 1949 may be quickly dealt with as the SPA (and the PA) clearly show that they were stamped on 17 January 2017, nearly two weeks after they were executed. Thus, this allegation was a non-starter.

[20] Next, on whether the defendant had executed the SPA and the PA. Before delving into the merits of the parties' contentions on this issue, it will have to be noted that despite the pleaded defence that the signatures of the defendant on the SPA and the PA had been allegedly forged, this was not included as one of the agreed issues to be tried in this action.

[21] The agreed issues as they were framed instead called for the court's determination on whether the parties had, vide the SPA *intended* for the sale of the land and whether the SPA was binding on the parties. Conversely, it also necessarily called for a determination on the defendant's allegation that he had only agreed to sublease the land to the plaintiff.

[22] Notwithstanding the same, following the Court of Appeal's decision in *Bounty Dynamics Sdn Bhd (formerly known as Media Development Sdn Bhd) v Chow Tat Ming & 175 Ors* [2016] 1 MLJ 507, it was not opened for the court to disregard the forgery point. In that case, the Court of Appeal, inter alia, held that:

> [2] Although limitation was not an issue that was expressly included in the agreed issues for trial, it was pleaded in the appellant's defence and was raised in the course of trial and in the submissions of both parties. In such circumstances, the issue of limitation became part of the issues at the trial, the framing of agreed issues during case management was to facilitate the trial process; agreed issues were not in the nature of pleadings. Since both parties departed from the agreed issues, the issue of limitation became relevant for appreciation and evaluation by the trial judge.

[23] Guided by the Court of Appeal's decision and notwithstanding the agreed issues to be tried, this court has also considered whether the signatures of the defendant on the SPA and PA had been forged.

[24] PW2 testified that he knew both the plaintiff and defendant some 20 years prior to the execution of the SPA. PW2 who was appointed as the *Ketua Kampung* of Kampung Nangoh since 15 April 1999 until 2016 further said that he had attested the signatures of both the plaintiff and the defendant on the SPA at the request of the plaintiff but that he did not know the contents of the document save that it was for the sale of the land.

[25] PW2's reliability as a witness was questioned by the learned counsel for the defendant, contending that he was not privy to the SPA and neither did he have personal knowledge of the documents. Further, it was contended that PW2 could not have explained the contents of the SPA to the defendant when the latter allegedly signed on the document.

[26] With respect, the criticism by the learned counsel for the defendant of PW2's testimony missed the mark. PW2's role was merely to attest to the signatures of the plaintiff and the defendant on the SPA and the payment voucher.

[27] In *Black's Law Dictionary* (6th Ed) at pp 127–128, the words 'attest' and 'attestation' were given the following meanings:

> *Attest*. To bear witness to; to bear witness to a fact; to affirm to be true or genuine; to act as a witness to; to certify; to certify to the verity of a copy of a public document formally by signature; to make solemn declaration in words or writing to support a fact; to signify by subscription of his name that the signer has witnessed the execution of the particular instrument. *Lindsey v Realty Trust City Lumber Co of Bridgeport v Borsuk* 131 Conn 640, 41 A 2d 775, 778. Also the technical word by which, in the practice in many of the states, a certifying officer gives assurance of the genuineness and correctness of a copy. Thus, an 'attested' copy of a document is one which has been examined and compared with the original, with a certificate or memorandum of its correctness, signed by the persons who have examined it. See Affirmation; Jurat; Oath; Verification.
>
> *Attestation*. The act of witnessing an instrument in writing, at the request of the party making the same, and subscribing the name of the witness in testimony of such fact. In *Re Carlson's Estate* 156 Or 597, 68 P 2d 119, 121. See Affirmation; Jurat; Oath; Verification.

[28] From the above definitions, it cannot be said that the attestor has a duty to ensure that the person whose signature was being attested to understood what document he was executing. This is to be contrasted from s 27(2) of the Moneylenders Act 1951 which expressly requires the attestor to explain the terms of the moneylending agreement to the borrower, and to certify on the agreement that the borrower appears to understand the meaning of the terms of the agreement.

[29] Thus, whether the defendant understood the contents of the documents he was signing was another matter altogether (and which will be deal below — see para [49]–[72]). The question was whether this court believed PW2's testimony when he said he saw the defendant signed the SPA and the payment voucher.

[30] It was submitted by the learned counsel for the defendant that PW2's evidence was to be treated with caution as he was allegedly not an independent witness, citing the case of *In the Matter of the estate of Chen Ngow @ Chen Seong Chin, deceased, and another petition* [2011] 6 MLJ 737; [2011] 1 LNS 694. The court's attention was drawn to PW2's answers in cross-examination that he had known the plaintiff for some 20 years and that they had a close relationship. However, what learned counsel for the defendant omitted to also

draw to the court's attention were PW2's similar answers when cross-examined about the defendant:

> Q: Do you know Dakang Bin Bikasan?
>
> A: Saya mengenali dia semasa kami sama2 masuk peneroka di Nangoh. Dari situ saya kenal dia.
>
> Q: For how long?
>
> A: Lama itu lebih kurang 20 tahun juga habis sama-sama masuk dulu.
>
> Q: Are you close with Dagang (sic)?
>
> A: Itu rapat tidak la, tapi tidak jauh rumah.
>
> (At lines 5–14 at p 13 of the NOP)

[31] Although PW2 said that he was not that close with the defendant, I did not find it to be of any significance at all. From the court's observation of PW2, there was nothing to suggest that his testimony was unworthy of credit. Contrary to the submissions by the learned counsel for the defendant, this court found him to be forthright in his answers. In fact, there was no suggestion in cross-examination that PW2 was an interested witness for the plaintiff.

[32] The case of *Chen Ngow* was readily distinguishable as in that case, apart from the parties' close relationship, the court also found the truth of the witness' evidence itself to be doubtful.

[33] Bearing in mind that PW2 was a *Ketua Kampung* at the material time and that he had known both the plaintiff and the defendant, I found the submissions by the learned counsel for the defendant that PW2 was a layperson and therefore his attestation of the SPA and payment voucher was questionable to be without any merit. Quite appart from seeing *Ketua Kampungs* as mere laypersons, the court has in fact treated the evidence of *Ketua Kampungs* to be of value — see *Ukun Ampong v Mundan bin Gomasi* [2010] MLJU 959; [2010] 1 LNS 918.

[34] As for the PA, the plaintiff's case was that the defendant's signature had been attested to by the late George Bungow, a commissioner for oaths with the Sandakan Court. PW1 confirmed this as being former colleagues, she said she was familiar with George Bungow's signature. PW1's identification and confirmation of George Bungow's signature was not challenged by the learned counsel for the defendant. The only suggestion was that PW1 was not privy to the PA and that she was also not present at the time of its execution by the defendant. In submission, it was also contended that PW1's evidence amounted to hearsay and therefore should be disregarded.

[35] Although trite law, perhaps this would be an opportune time to restate what amounts to 'hearsay' evidence. In *Subramaniam v Public Prosecutor* [1956] 1 MLJ 220, MR LMD elucidated as follows:

> Evidence of a statement made to a witness by a person who is not himself called as a witness may or may not be hearsay. It is hearsay and inadmissible when the object of the evidence is to establish the truth of what is contained in the statement. It is not hearsay and is admissible when it is proposed to establish by the evidence, not the truth of the statement but the fact that it was made. The fact that the statement was made, quite apart from its truth, is frequently relevant in considering the mental state and conduct thereafter of the witness or of some other person in whose presence the statement was made.

[36] Reverting to the present case, it must be borne in mind that PW1 merely confirmed the signature of the attestor (George Bungow) on the PA and nothing more. It cannot be therefore said to have amounted to hearsay evidence. In any event, it was not shown by the learned counsel for the defendant as to how the hearsay rule would have applied.

[37] On the other hand, s 47 of the Evidence Act 1950 allows for the reception of opinion evidence of a person who is not an expert but who is familiar with the handwriting of the person whose handwriting or signature is in issue — see *Goh Hock Hai v EON Bank Bhd* [2011] 3 MLJ 189. In the present case, PW1's evidence identifying the signature of George Bungow was not challenged at all. Thus, this court was entitled to accept and this court did accept that the said George Bungow had attested the signature of the defendant on the PA.

[38] Following therefrom, this court was further entitled to invoke s 114(e) of the Evidence Act 1950 that *omnia praesumuntur rite esse acta* (all acts are presumed to have been rightly and regularly done). In *Mohd Nazir bin Badar Shair v Timbalan Menteri Dalam Negeri* [2000] 2 MLJ 559; [2000] 2 CLJ 805, Augustine Paul J (later FCJ) referred to *Sarkar on Evidence* (13th Ed) at p 1037 and stated:

> ... the foundation for the maxim is that every person whether in his private or official character, does his duty and unless the contrary is proved, it is presumed that all things are rightly and regularly done.
>
> The signature of a Commissioner for Oaths in an affidavit showing that it has been sworn before him is an official act and the affidavit must be presumed to have been regularly affirmed even though the jurat is on a completely new page unless the contrary is proved. *Thus, in Jugraj Singh & Anor v Jaswant Singh & Ors AIR* [1971] SC 761 *it was held that the endorsement of a notary public that a power of attorney had been subscribed and sworn before him raises the presumption that he must have satisfied himself in the discharge of his official duties that the person executing it is the proper person.* (Emphasis added.)

A **[39]** Likewise, with the unchallenged testimony of PW1 that George Bungow, a commissioner for oaths with the Sandakan Court had attested to the defendant's signature on the PA, it was opened for the court to invoke the presumption under s 114(e) of the Evidence Act 1950.

B **[40]** Based on the evidence discussed above, this court found that the plaintiff has prima facie proven that the SPA and the PA had been executed by the defendant. The defendant therefore bore the evidential burden of proving that his signatures on the said documents had been forged as alleged in his statement of defence — see ss 101, 102 and 103 of the Evidence Act 1950 and
C the Federal Court case of *Letchumanan Chettiar Alagappan @ L Allagappan (as executor to SL Alameloo Achi alias Sona Lena Alamelo Acho, deceased) & Anor v Secure Plantation Sdn Bhd* [2017] 4 MLJ 697.

D **[41]** In *Letchumanan's case*, a power of attorney made in favour of one Kalidas a/l Komarawelo was used to execute a sale and purchase agreement of the subject land to the respondent. The first appellant claimed that his signature on the power of attorney had been forged and that therefore the power of attorney was invalid.

E **[42]** Both the High Court and the Court of Appeal held that the respondent was a bona fide purchaser and that the appellants had not discharged the burden of proving that the power of attorney had been forged as the appellants failed to call a handwriting expert witness to prove the allegation of forgery.

F **[43]** Before the Federal Court, one of the questions of law posed was 'whether a case of forgery can only be proved by means of the opinion of a handwriting expert'?

G **[44]** The Federal Court answered this question in the negative and stated that the court is also to consider the totality of the evidence, the evidentiary facts and make the necessary inferences. On the facts, the Federal Court found that:

H
> In short, all reasonable inferences drawn from the evidentiary facts were stacked against genuineness of the impugned PA. Rather, they only pointed to a grand scheme of fraud and deception.

I **[45]** In the present case the defendant did not call any handwriting expert to support his allegation of forgery. However, following the *Letchumanan*'s case, this court did consider whether it could, on a balance of probabilities, come to a conclusion that the defendant's signature had been forged based on the evidence before it.

[46] In his witness statement (DWS2), the defendant merely regurgitated his pleaded defence that his purported signatures on the SPA and PA had been forged. The defendant also reiterated that he only affixed his thumbprint on documents and not his signature as he was illiterate. No other circumstances were pleaded to support the allegation of forgery. Neither was there any other evidence led to support the allegation of forgery.

[47] The only other alleged 'suspicious circumstances' pleaded by the defendant were in relation to the parties' alleged (lack of) understanding of the contents of the SPA and/or PA and the fact that the land was still under a land application at the material time. However, these did not relate to the allegation of forgery (also see paras [49]–[81]) below on the discussion regarding these allegations).

[48] On the totality of the evidence, this court therefore found that the allegation of forgery by the defendant had not been made out and proceeded to consider the agreed issues to be tried in this action.

[49] Issues 1 and 2 of the parties' agreed issues to be tried may be determined together. These issues called for the court's determination of the parties' intention when entering into the agreement ie whether the parties had actually intended for the sale and purchase of the land as contended by the plaintiff or for only a sublease of the land as contended by the defendant.

[50] The plaintiff testified that he had known the defendant since the year 2000 and that in 2006, the defendant had asked if he was interested in purchasing the land. The agreed price was RM6,000 per acre but that the defendant had requested for only RM3,000 per acre to be stated in the SPA.

[51] The plaintiff then got one Madam Fung to prepare the SPA who did so after obtaining the details from the plaintiff. The plaintiff then took the SPA for the defendant and PW2 to sign. Madam Fung also prepared the PA. The plaintiff could not remember who arranged for the defendant to sign the PA but he said after it was attested, the PA was returned to the plaintiff. The plaintiff then got Madam Fung to register the PA and to stamp the PA and SPA.

[52] The plaintiff said that he had paid a total sum of RM35,340 to the defendant towards the SPA:

(a) RM20,000 via cheque No RHB 374404 dated 7 December 2006;

(b) RM12,340 by cash on 7 December 2006; and

(c) RM3,000 by cash on 27 April 2008.

That left a balance of RM29,340 to be paid to the defendant upon the title being transferred into the plaintiff's name. The plaintiff produced payment vouchers as evidence of the RM35,430 payment, one of which was witnessed by PW2.

[53] In his witness statement the defendant claimed that the only transaction he had entered with the plaintiff was for the sublease of the land:

> S6: Oleh kerana anda tidak bersetuju bahawa anda telah menjual tanah tersebut kepada Plaintif, adakah anda pernah memasuki mana-mana urusan atau perlaksanaan dengan Plaintif?
>
> J6: Ya, satu dokumen untuk pajakan kecil (sublease) kerana saya hanya bersetuju untuk member (sic) pajakan kecil Tanah tersebut kepada Plaintif untuk tempoh sepuluh (10) tahun bermula dari tahun 2006 dengan jumlah pertimbangan sebanyak RM64,000.00 yang telah tamat pada awal tahun 2016 dann (sic) selain dari itu saya mengesahkan bahawa saya tidak pernah bersetuju untuk menjual Tanah ttersebut kepada Plaintif.

[54] The defendant also confirmed having received payment from the plaintiff but insisted that they were for the sublease:

> S8: Adakah anda menerima apa-apa pembayaran daripada Plaintif?
>
> J8: Saya telah menerima beberapa bayaran daripada Plaintif tetapi bayaran berkenaan adalah berkenaan dengan pajakan kecil (sublease) Tanah tersebut dan pembayaran tersebut tidak pernah dimaksudkan untuk dianggap sebagai sebahagian pembayaran harga pembelian Tanah tersebut kerana saya tidak pernah bersetuju untuk menjual Tanah tersebut kepada Plaintif. Oleh itu, dakwaan Plaintif kononnya wujud perjanjian antara Plaintif dan saya berkenaan harga belian Tanah tersebut dan kononnya wujud pembayaran sebahagian harga belian dalam jumlah RM35,340.00 yang dibuat oleh Plaintif kepada Defendan adalah tidak benar.

[55] Now, save for the oral evidence of the defendant and DW1 and their police reports made in the year 2016, no other documents were produced by the defendant in relation to the existence of the alleged sublease. This despite stating in his police report dated 30 April 2016 (at pp 5–6 of Bundle C) that there was a written agreement for sublease for which he had executed using his thumbprint.

[56] In the same police report the defendant further stated that in 2015, he had received a new agreement for the sale and purchase of the land and that the said agreement was purportedly signed by a person unknown as the defendant. This agreement was also not produced by the defendant during the trial. In fact, when asked in cross-examination about the alleged agreement in 2015, the defendant contradicted his police report:

Q: Refer you to page 5 of Bundle C. You had alleged in your police report that you received an agreement to sell the said land in 2015. Where is this agreement that you were referring to?

A: Saya tidak tahu perjanjian itu.

(At lines 25–28 at p 83 of the NOP)

Q: You lodged this police report yourself?

A: Bukan.

Q: Who asked you to make this police report?

A: Peguam.

Q: (Explained again).

A: Sendiri.

Q: You said you made the police report yourself but you cannot produce the Sale and Purchase Agreement. Someone must have asked you to make this statement in the police report, correct?

A: Betul.

(At lines 1–14 at p 84 of the NOP)

[57] Learned counsel for the defendant submitted that there was no evidence of the contents of the SPA and the PA having being explained to the defendant beforehand. The suggestion was that even if the defendant had signed a document, it was for a sublease of the land. The case of *Mohammad bin Loi (the personal representative ofthe deceased Loi bin Bataur@ Pg Lui Bataur) v Tai Leong Eng (the personal representative ofthe deceased Tai Wah Chung) & Ors and other appeals* [2018] MLJU 1251; [2018] 1 LNS 1282 was cited as support wherein in holding that there were no sale and purchase agreements and powers of attorney entered into by the plaintiffs, Dr Hj Alwi Hj Abdul Wahab J held that the documents which were written in English were not sufficiently proven to have been read, explained and interpreted to the landowners.

[58] For the plaintiff, it was contended that the defendant was bound with what he had executed regardless of whether he had understood the contents of the documents. Reliance was made on the Court of Appeal case of *Lin Wen-chih & Anor v Mycom Bhd* [2014] 3 MLJ 691; [2013] 1 LNS 1231. In that case, the appellants who were of Taiwanese nationality, inter alia, pleaded *non-est factum* to avoid liability for the documents which they had signed and which were written in the English language. The appellants also alleged that the contents of the documents were not explained to them.

[59] While deliberating on this issue, the Court of Appeal stated as follows:

A ... The principle, a person is bound by his contract regardless that he is ignorant of the language it is written in, is well established. The case of *Subramaniam v Retnam* [1965] 1 LNS 169 referred to *Ismail bin Savoosah & Ors v Hajee Ismail* [1889] 4 Ky 453, 458 where Wood A-G CJ said:

B > It was argued that the defendant being ignorant of the English language he is to be excused on that account from the performance of his contract, but it is to my mind clear that in the common principles which govern the law of contract, the person who contracts by a written document, whether or not he understands the language in which it is written, is bound, in the absence of fraud or misrepresentation, by the terms of that contract, as to which proposition no
C > objection was authoritatively sustained ...

[22] *Non est factum* is Latin for 'it is not my deed'. A successful plea of *non est factum* makes the contract or document signed void *ab initio*. A plea of *non est factum* means that they signed the two documents by mistake. Mistake, however, is not so much because one does not know the contents of the documents that one is signing,
D but that it was or turned out to be of a character entirely different from what is thought to be signed. This may be illustrated by *Chin Leong Soon & Ors v. Len Chee Omnibus Co Ltd & Anor* [1969] 1 LNS 28 FC where Suffian Ag LP (as he then was) said:

E > Her claim is clearly based on the doctrine of *non est factum*, which means that if a person, owing to an error, executes a legal document which is of an entirely different character from that which he intended to sign, he is entitled to found his claim on it or to plead it as a defence if he is sued on the document ...

F **[60]** It must be noted that the defendant had not pleaded *non-est factum* as part of his defence. The defendant's case was that the SPA and PA had been forged and that the said documents were in English and that he was illiterate. Neither was the plea of *non-est factum* raised in the defendant's submissions. This is to be contrasted from the case of *Mohammad bin Loi* referred to above
G where the plea was raised.

[61] In any event, this court found no evidence led by the defendant to support the plea of *non-est factum*. There were no pleas that either the plaintiff and/or Madam Fung had misrepresented to the defendant as to the contents of
H the SPA and PA and that as a result, the defendant believed that he was executing a sublease agreement instead. Neither was it pleaded that the defendant was under a mistaken belief when he executed the SPA and PA. The absence of these elements has been held to render the plea without any support — see *Kiong Man v Kishen* [1971] 1 MLJ 54.

I

[62] It was also urged upon the court to invoke s 114(g) of the Evidence Act 1950 against the plaintiff as the plaintiff did not call Madam Fung as one of his witnesses. In view of the court's findings above (see paras [57]–[61]), I did not see it fit to do so.

[63] This court therefore agreed with the submissions by the learned counsel for the plaintiff that the defendant was bound by the terms of the SPA and PA even if he had not understood the contents of the documents.

[64] But there was another reason to hold that the plaintiff and the defendant had intended for the sale and purchase of the land. It is the following.

[65] The plaintiff's testimony that there was an agreement between him and the defendant for the sale and purchase of the land was supported by the contemporaneous documents produced in court namely the SPA, PA and the payment vouchers evidencing the part payments made to the defendant. As already found above (see paras [8], [9], [24]–[39]), the evidence of the plaintiff's witnesses supported the plaintiff's case. It was submitted by the learned counsel for the plaintiff that there was nothing unfair or unusual in the terms of the SPA and PA to suggest otherwise and to this, I agreed.

[66] On the other hand, save for the oral evidence of the defendant, there were no documents produced to support the allegation that he had only intended to sublease the land to the plaintiff.

[67] The defendant's pleaded case was that the purported sublease was for ten years commencing from the year 2006 and for the consideration of RM64,000. However, no facts were pleaded as to the terms of the payment of the said sum of RM64,000 save for to state that any payments made by the plaintiff were only towards the sublease. This was reiterated in the witness statement of the defendant.

[68] When cross-examined on the same issue, the defendant only agreed to having received the RM20,000 cheque from the plaintiff (see lines 15–17 at p 75 of the NOP) and not the rest of the payments (see lines 25–30 and line 1 at pp 76–77 of the NOP).

[69] Further, when confronted with his police report (at pp 5–6 of Bundle C) wherein he had stated that the plaintiff had paid around RM34,000 towards the sublease, the defendant stated the amount was incorrect (see lines 25–30 at p 79 of the NOP).

[70] The defendant's incoherent answers were further apparent when asked in cross-examination about the purported sublease:

> Q: Your defence is that you had agreed to 'sublease' the said Land to the plaintiff for a period of 10 years at the total consideration of RM64,000.00, correct?
>
> A: Tidak betul.

(At lines 26–28 at page 78 of the NOP)

Q: Are you saying that you did not agree to sublease the land either?

A: Tidak setuju.

Q: You knew that Mr Mok had entered the land sometime in 2006, correct?

A: Tidak betul.

Q: So, you are saying that you do not know that Mr Mok had entered the land sometime in 2006, correct?

A: Tidak tahu.

Q: But you remember receiving money from him, correct?

A: Ada. Tapi aku terima duit tiada resit.

Q: How much have you received from Mr Mok?

A: Ada mungkin RM30 lebih.

Q: It's over RM30,000, correct?

A: Tidak.

Q: Are you saying that you only received RM30.00 from Mr Mok?

A: Tidak betul.

(At lines 1–24 at p 79 of the NOP)

[71] While this court appreciated that the defendant was a 73 year old man and as such, would have been overwhelmed by the court proceedings, this court found it wanting that no attempt was made by learned counsel for the defendant in re-examination to seek clarification from the defendant as to his incoherent answers. That being the case, the court was left with no evidence to support the defendant's claim that he had only intended to sublease the land.

[72] Thus, weighing the evidence by the plaintiff and the defendant, this court preferred the case presented by the plaintiff that the parties had intended for the sale and purchase of the land and not merely for a sublease.

Whether the SPA and the PA are valid and enforceable between the parties

[73] It was pleaded by the defendant that as the land was still under land application status at the material time, the SPA was therefore an unenforceable agreement.

[74] The plaintiff's own averment in his statement of claim confirmed that the SPA was for the sale and purchase of the land which was under land application. This was reflected in the following recitals in the SPA:

(1) The Landowner is the successful applicant of a parcel of land under PT 93081873 (Lot 36) (RSP 8809035) and to be registered under CL 085330776 measuring an area of 4.363 hectares (10.78 acres) more or less and such situate at Nangoh, in the District of Beluran Sabah (hereinafter referred to as 'the said land'). A

(2) The issue copy of the document of title has yet to be issued by the Director of Land & Surveys, Kota Kinabalu pending the survey of the said land. B

[75] Learned counsel for the defendant referred this court to the case of *Mohammad bin Loi*, wherein Dr Hj Alwi Hj Abdul Wahab J also held that a land application by itself does not confer any legal right or interest to the applicants in the land applied for and that the sale and purchase agreements, although proven to be entered will not have a binding effect on the parties in that case. C

[76] On the other hand, the learned counsel for the plaintiff referred to the Court of Appeal case of *Hon Chung Lip v Kwan Ngen Wah & Ors* [2012] 5 MLJ 356; [2012] 1 LNS 255 where although the court held that the land applicants had acquired no legal right or interest over the land to dispose of to the appellant, the court also held that the sale and purchase agreements were valid and enforceable. In holding so, the Court of Appeal referred to what Arifin Zakaria JCA (as His Lordship then was) in *Besharapan Sdn Bhd & Ors v Agroco Plantation Sdn Bhd & Anor* [2007] 1 MLJ 101; [2006] 4 CLJ 878 said: D E

> ... it is our view that even though on the date of execution of the 1989 Agreement the second and third appellants did not have any registered right or interest in the subject land that does not render the agreement which is otherwise valid and enforceable to be void or invalid. We hold that second and third appellants at the material time have sufficient interest in the subject land to enter into a binding agreement by which they agreed to transfer the subject land when the title or interest in the subject has been registered in their names. In other words the parties agreed that the agreement will only become enforceable the moment the second and third appellants' right or interest in the subject land is registered under the Ordinance. We find no difficulty with such an arrangement. For the above reasons we find no merit in the first ground canvassed before us by the appellants. F G

[77] In rebuttal, learned counsel for the defendant submitted that the case of *Hon Chung Lip*, in fact supported the defendant's case as therein it was held that the applicants had no registered right or interest over the lands which they could dispose to the appellant. H

[78] It must be noted that in the case of *Hon Chung Lip*, the appellant had sought for a declaration that he was the beneficial and legal owner of the subject lands which he had purchased from the land applicants. Thus, when the Court of Appeal held that the land applicants had no registered right or interest to begin with, it followed that they could not have 'passed on' any right to the I

appellant for the court to have granted the declaration sought.

[79] However, in the present case, the plaintiff had not sought for such declaration ie that the plaintiff was the beneficial and/or legal owner of the land. The plaintiff had instead sought for a declaration that the SPA was binding on the defendant and for its specific performance. To my mind, such a remedy would have been in the contemplation of the Court of Appeal in *Hon Chung Lip*, when it concluded that:

> Thus despite our finding that the appellant has not acquired any legal right or interest in the lands, we are of the view that *the SPAs are valid and enforceable and that the appellant is not without a remedy as against the applicants*. (Emphasis added.)

[80] In the present case, although it was not in dispute that the land title had yet to be issued, it was an agreed fact that in January 2016, the defendant had put up a notice on the land to prevent the plaintiff from entering the land. This was contrary to cl 1 of the PA which, inter alia, allowed the plaintiff to take possession of the land. Thus, following the case of *Hon Chung Lip*, this court was of the view that the remedies sought for by the plaintiff in this action were not dependent on the land title having been issued so that the defendant's distinction would apply.

[81] It was on this basis that this court answered issue (3) in the affirmative in favour of the plaintiff.

Whether the defendant's counterclaim is statute barred

[82] The defendant had sought for the following remedies in his counterclaim (verbatim):

> (A) A declaration that the defendant is the legal registered owner of the said land;
>
> (B) A declaration that the Sale and Purchase Agreement dated 29th December 2006 allegedly entered between the Plaintiff and the Defendant is null and void and has no legal effect whatsoever;
>
> (C) A declaration that the Power of Attorney dated 29th December 2006 allegedly executed by the Defendant is null and void and has no legal effect whatsoever;
>
> (D) An injunction to restrain the Plaintiff, by himself or buy his agents or servants or otherwise howsoever, from trespassing into the said land and/ or interfering the Defendant in whatsoever manner in maintaining the said land;
>
> (E) General damages to be assessed;
>
> (F) Statutory interest at the rate of 5% per annum on any sum awarded pursuant to prayer (E) above from the date of the judgment to the date of full settlement;
>
> (G) Costs on solicitors and client basis to be paid forthwith; and

(H) Any further or other relief as this Honourable Court deems fit and proper to grant.

[83] Clearly and by their nature, the remedies sought for by the defendant in his counterclaim have been negated by the findings of this court as to issues (1), (2) and (3) above in favour of the plaintiff.

[84] In consequence thereof, this court was of the view that issue (4) had been rendered superfluous to be determined.

CONCLUSION

[85] Consequent to the agreed issues to be tried being answered in favour of the plaintiff, this court therefore found that the plaintiff had proven his case on a balance of probabilities and granted prayers (a), (b), (bb), (c), (d) and (e) of the plaintiff's statement of claim as amended pursuant to an unopposed oral application by the learned counsel for the plaintiff on 18 June 2019. I also ordered costs of RM55,000 subject to allocatur.

Plaintiff's action allowed with costs of RM55,000 subject to allocator.

Reported by Dzulqarnain bin Ab Fatar